

Exhibit O

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF NEW YORK
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5 UNITED STATES OF AMERICA) 18CR108 EAW
6)
7 vs.
8 Rochester, New York
9 FRANK GIACOBBE, PATRICK
10 OGIONY, KEVIN MORGAN, TODD
11 MORGAN, ROBERT MORGAN &
12 MICHAEL TREMITI) June 25, 2019
13 Defendants. 4:30 p.m.
14 - - - - - X

STATUS CONFERENCE VIA TELEPHONE

10 TRANSCRIPT OF PROCEEDINGS
11 BEFORE THE HONORABLE ELIZABETH A. WOLFORD
12 UNITED STATES DISTRICT JUDGE

13 JAMES P. KENNEDY, JR., ESQ.
14 United States Attorney
15 BY: JOHN D. FABIAN, ESQ.
16 DOUGLAS A. PENROSE, ESQ.
17 MARY C. KANE, ESQ.
18 Assistant United States Attorneys
19 138 Delaware Avenue
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21 Appearing via telephone

18 PATRICK J. BROWN, ESQ.
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22 Appearing via telephone

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3 CONTINUING APPEARANCES

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8 Appearing via telephone on behalf of Defendant T. Morgan
9 Appearing via telephone

10 JOEL M. COHEN, ESQ.
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14 Appearing via telephone on behalf of Defendant R. Morgan
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20 Appearing via telephone

21 P R O C E E D I N G S

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27 THE COURT: Good afternoon, everyone. Can you
28 hear me okay. It's Judge Wolford.

29 MR. BROWN: Pat brown, I can hear you fine, Judge.

30 MAGISTRATE JUDGE SCHROEDER: It's good to hear,
31 Pat. So I'll go through with appearances. We're on the
32 record. We're here in the matter of the United States versus

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2 Robert Morgan, et. Al, 18CR108. I scheduled this call because
3 of the letter that I received from Mr. Cohen dated June 25th,
4 2019. I understand, though, my Chambers sent the call in
5 information to all parties involved in the case and you're
6 welcome to participate, but the purpose of this call was to
7 address the issues that Mr. Cohen raised in his letter to me
8 dated June 25th, 2019. Go ahead.

9 MR. BROWN: I didn't plan on actively
10 participating, I wanted for informational purposes wanted to
11 listen in if I could, because my client has an interest in some
12 of the properties.

13 THE COURT: ' That's totally fine. Pat Brown is
14 here on behalf of -- the first name of your client?

15 MR. BROWN: Kevin Morgan.

16 THE COURT: Kevin Morgan. And Mr. Rothenberg,
17 you're here on behalf of.

18 MR. ROTHENBERG: Todd Morgan, your Honor.

19 THE COURT: Todd Morgan. Mr. Cohen, you're on the
20 phone on behalf of Robert Morgan.

21 MR. COHEN: Yes, your Honor.

22 THE COURT: And, Mr. Thompson, you're on the phone
23 -- who is your client?

24 MR. THOMPSON: Mike Tremiti.

25 THE COURT: Is there any other defense counsel who

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2 are on the call? No? Okay. And then on behalf of the
3 government, we have John Fabian, Doug Penrose, and Mary Kane,
4 correct?

5 MS. KANE: Correct.

6 THE COURT: So I have Mr. Cohen's letter dated
7 June 25th, 2019. I also then have the -- I'm sorry, Mr.
8 Cohen's letter is dated June 21, 2019. And I then have Ms.
9 Kane's letter dated June 25th, 2019. I guess, Mr. Cohen, my
10 question for you is what are you asking me to do at this point?

11 MR. COHEN: Your Honor, thank you. We're asking
12 for, specifically, for two forms of relief. One in which we
13 tried to outline in the letter, and the other arises in part to
14 the letter Ms. Kane submitted this morning. The first, which
15 is a more recent request, we're asking the Court to order
16 discovery from the government for communications with third
17 parties about property restraint in this case in order to
18 understand what they said in writing or otherwise to third
19 parties about properties, about whether they can be sold, about
20 how they can be sold, about where the properties can go, which
21 we think is necessary in order to remediate some of the harm
22 that has occurred. That is the more recent request, your
23 Honor, which we did not mention in the letter on Friday because
24 there was additional concerns raised by Ms. Kane's letter we
25 hope to address today that we think necessitate and justify an

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2 order of discovery. The other form of relief, your Honor, and
3 we ask and we see from Ms. Kane's letter that the government
4 intends to abide by this, its intent no longer, if I understand
5 correctly, and Ms. Kane can correct me if I'm wrong, they no
6 longer intend to engage in discussions with third parties on
7 the issue of property restraints or their views or opinions or
8 answering questions about that process, which, voluntarily,
9 would alleviate concerns going forward. But we think, in
10 addition to discovery, for there to be a statement either from
11 the government or from the Court that in this action no
12 properties that Mr. Morgan or any of the codefendants have an
13 ownership interest in have been lawfully restrained or seized
14 by the government, and that there is nothing in the superseding
15 indictment that or any of the prior charges in this case or the
16 or the related cases that can be interpreted to prevent sales
17 of assets owned the defendants unless there a court order in
18 the future stating otherwise. And that relates to the
19 discovery requests because there seems to be communications
20 with many third parties which have brought up the issues
21 whether transfers can occur and have communicated *de facto*
22 there is some sort of restraint or risk involved in
23 participating in a transaction. The government has shared its
24 objections and it's opposition to the sale of properties,
25 including ones that are not even listed among the properties

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2 that are enumerated in the superseding indictment, which is the
3 only place Mr. Robert Morgan has been charged. So, for reasons
4 we can get into in further detail, I don't want to, because you
5 asked me to summarize, that is the forms of relief, an order
6 stating, at your Honor's discretion, of course, and also an
7 order requiring the government to turn over discovery of the
8 communications in connection with the efforts its been making
9 since the indictment was brought with respect to the restraint
10 or sale of properties.

11 THE COURT: Thank you, Mr. Cohen. I take it, from
12 the government's perspective, you are opposed to the relief
13 that Mr. Cohen is requesting?

14 MS. KANE: Yes, your Honor. We would ask Mr.
15 Cohen to file a pretrial motion and cite authority for his
16 request, his new request by asking the Court to order discovery
17 of communications that we have had with third parties who
18 contacted us regarding pending sales of certain Morgan
19 properties.

20 THE COURT: Ms. Kane, I have your letter here in
21 front of me. A couple of points of clarification that I think
22 just should be made for the record. First of all, on your
23 first page, you indicate that I directed Mr. Cohen to,
24 apparently, file an application with respect to the attorneys'
25 fees at the conclusion of the SEC argument, and that is just

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2 not consistent with what happened. And I went back and looked
3 at the transcript. The only issue that was raised at the SEC
4 appearance was with respect to Mr. Cohen's request to me to
5 amend the deadline that Judge Schroeder had set for appearance
6 of counsel. And I indicated that any application to change
7 that deadline should be made to Judge Schroeder. I did not
8 direct Mr. Cohen to do anything with respect to that, let alone
9 to make an application about what assets were available for --
10 to pay attorneys' fees. I'm not clear on why you would have
11 thought differently.

12 MS. KANE: Your Honor, I thought that when, at the
13 end of the SEC hearing, that that subject matter came up
14 regarding his appearance and attorneys' fee, and that that
15 support indicated that that was a motion that was better placed
16 before the magistrate judge.

17 THE COURT: No, that is not correct. Just be
18 clear, let me be clear. It wasn't at the end of the hearing,
19 first of all, and it was with respect to Mr. Cohen submitting a
20 letter to me asking to change a deadline in an appearance that
21 was set in front of Judge Schroeder. I want the record to be
22 clear about that. The other question I have for you, Ms. Kane,
23 is in, I guess, on your fifth page, right before the heading
24 that begins "Restraining Order," you indicate, "The government
25 as of the date of this letter will agree to cease any

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2 discussions as to reaching any type of agreement as to this
3 category of properties unless further litigation is commenced."
4 Could you explain to me what you mean by that? By this
5 category of properties, you're referring to the properties that
6 are not referenced in the indictment?

7 MS. KANE: Yes, I am, the unindicted properties.

8 THE COURT: And so, in other words, what I'm
9 gleaning from this is that the government has received a number
10 of inquiries from individuals with respect to the sale of, I
11 guess, both the indicted, but more specifically, the unindicted
12 properties, and in some respects has attempted to provide, I
13 guess, informal responses to these inquiries. And what you're
14 saying is, basically, you're going to stop that as of this
15 date. Is that a fair characterization?

16 MS. KANE: Yes.

17 THE COURT: Okay. Here is my take on this. I,
18 first of all, Mr. Cohen, I don't know if I have the authority
19 to or what the basis for my authority would be to either order
20 discovery or to issue some type of order giving any kind of
21 assurance or reassurance to individuals who are in the process
22 of exploring the purchase of these properties. I think this is
23 better dealt with in the way of a formal motion as opposed to
24 just a letter being written. I think I understand why Mr.
25 Morgan is concerned. I understand why there is some cause for

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2 complaint over the government. I mean, it's one thing for the
3 government to take the position that it's not going to take a
4 position with respect to the sale of property, but, for
5 instance, for Ms. Kane to state in her letter, I guess it was
6 dated June 10, 2019, that the government's objecting to the
7 sale of some property that, at least at this point in time, is
8 not part of the indictment and is not part of any active
9 litigation. I think it's understandable why there is a concern
10 about that. But for me to provide any kind of affirmative
11 relief with respect to this, I need to have briefing. I need
12 to have an appearance. We can have oral argument on it. But I
13 just don't see how I'm going to resolve this with a letter
14 being submitted and the government submitting a letter in
15 response contesting the request for relief.

16 So, I didn't mean to render everybody speechless
17 in that regard, but that is my reaction to it. So, let me put
18 it this way. Mr. Cohen, if you want to file a formal motion,
19 you're obviously free to do that. I will say this, I've gotten
20 involved enough at this point in the property, including in
21 connection with my handling of the SEC matter, so if a motion
22 related to the property is filed, frankly, either by the
23 government or by Mr. Cohen, I want it filed and directed to me
24 as opposed to going to the magistrate judge for a Report and
25 Recommendation. But other than that, at this point in time, I

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2 don't see I'm in a position to grant any kind of affirmative
3 relief one way or the other. Does anybody have any questions
4 about that? I guess I'll start with you, Mr. Cohen.

5 MR. COHEN: Your Honor, no. We understand your
6 viewing and we will take appropriate steps to follow that.

7 THE COURT: Any questions from the government?

8 MS. KANE: No, your Honor.

9 THE COURT: Okay. Any questions from any of the
10 other defense attorneys?

11 MR. ROTHENBERG: Only one question, Judge, this is
12 David Rothenberg speaking. I don't think I received a copy of
13 the government's letter. How is that letter transmitted?

14 THE COURT: It was sent by e-mail. Does the
15 government have any objection to filing this on the docket?

16 MS. KANE: No, your Honor.

17 THE COURT: Okay. Ms. Kane, if you could go ahead
18 and arrange to file that on the docket so everybody has a copy
19 of it, that would be helpful.

20 MR. ROTHENBERG: And I would request, your Honor,
21 if going forward if any party wishes to contact the Court about
22 some matter related to the case, I would request that that
23 letter be copied to all counsel, not just whichever particular
24 party is immediately involved in that the dispute.

25 THE COURT: That is a fair request. I'm sure Ms.

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2 Kane was in a rush to get it to me because we had this
3 telephone call that was scheduled in short order. But I would
4 ask everybody, if you're sending something to the Court, make
5 sure you copy all of the parties. Although, I mean, I'm not
6 sure the parties who have entered plea agreements need to be
7 copied on matters, unless, Mr. Brown, you want to be copied on
8 everything.

9 MR. BROWN: Judge, the short answer, I guess, is
10 no. It seems to me that the way we've been going on here, if
11 something comes into the Court, it eventually makes it to the
12 docket anyway. So I'm satisfied with the way we've proceeded.

13 THE COURT: I'm not clear on what Judge
14 Schroeder's personal preference is. I know there are some
15 judges in this district that refuse to have letters on the
16 docket. I actually prefer them to be on the docket, because I
17 think it makes the record clearer.

18 MR. BROWN: I have no complaints to the way we've
19 been proceeding thus far. I recognize that we pled, so my
20 interest in being on the call today was just because it
21 involved these properties that he has some interest in. Other
22 than that, I'm good to go.

23 THE COURT: Okay. All right. Anything else from
24 anybody?

25 MR. ROTHENBERG: No, your Honor.

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2 THE COURT: Everybody have a good afternoon.

3 MR. ROTHENBERG: Thank you.

4 MS. KANE: Thank you.

5 * * *

6 CERTIFICATE OF REPORTER

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8 I certify that the foregoing is a correct transcript of the
9 record of proceedings in the above-entitled matter.

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11 S/ Karen J. Bush, RPR

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Official Court Reporter

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